IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

Crl.MC.No. 534 of 2006(B)

CC.312/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, THIRUVALLA

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PETITIONER: ACCUSED.

KOSHY CHERIAN, AGED 66YEARS,
S/O.CHERIAN, KEERIKKADU HOUSE, KAATTUKARA,
KAATTUKKARA MURI, THIRUVALLA VILLAGE.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS: COMPLAINANT AND STATE.

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

ADDL.R2 SUSAN ABRAHAM, D/O. P.I. ABRAHAM
PATHINETTIL HOUSE, PADUTHODE P.O.
VENNIKULAM, MALLAPPALLY TALUK
PURAMATTOM VILLAGE.

(IMPLEADED AS PER ORDER DT.25.8.06 IN CRL.M.A.
4280/06)

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB
ADDL.R2 BY ADV. SRI.V.G.ARUN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 534 OF 2006

Dated this the 28th day of March, 2007

ORDER

The petitioner is the sole accused in a prosecution under Sec.498A of the IPC. Proceedings have been initiated on the basis of a final report submitted by the police. Investigation commenced on the basis of a complaint filed by the 2nd respondent before the learned Magistrate which was referred by the learned Magistrate to the police under Sec.156(3) of the Cr.P.C. Altogether, there were three accused persons. The 1st accused is the husband of the 2nd respondent. The 2nd accused is the petitioner – father-in-law, and the 3rd accused is the mother-in-law of the 2nd accused. After investigation, the police came to the conclusion that the allegations against the 1st and 3rd accused are not sustainable and hence filed final report arraying the petitioner herein alone as an accused. The 2nd respondent has filed a private complaint reiterating

the allegations raised by her in the First Information Statement.

2. The petitioner has come to this Court at this stage with a grievance that cognizance taken against him is bad in law and does deserve to be quashed. Inasmuch as no proper allegation of which the court can take cognizance subject to the law relating to limitation has been raised, cognizance taken is unsustainable and the prosecution deserves to be brought to premature termination, argues the learned counsel for the petitioner.

3. I shall not encumber the records with any unnecessary observations. I am called upon to exercise the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. Such jurisdiction is to be invoked only sparingly and in exceptional cases in aid of justice. It is not to be invoked as a matter of course at all. Has justice failed? Is there miscarriage of justice? Is there abuse of process of the court? These are the considerations which will weigh with the court while considering the plea for premature termination of the proceedings by invoking the extraordinary inherent jurisdiction.

4. The learned counsel for the petitioner points out that the letter relied on by the complainant may not be sufficient to

hold that an offence cognizable within the period of limitation has been committed.

5. I am of opinion that this is not a fit case where the powers under Sec.482 of the Cr.P.C. can or deserve to be invoked. The petitioner can, of course, raise all his contentions and claim discharge at the stage of Sec.239/240 of the Cr.P.C. The mere fact that there is possibility of discharge or acquittal at later stages cannot persuade this Court to invoke the extraordinary inherent jurisdiction. I am not going into the details, lest any observations made by this Court may prejudice the interests of the parties when the court considers the claim for discharge/acquittal at later stages. Suffice it to say that I am not persuaded to agree that the powers under Sec.482 of the Cr.P.C. deserve to be invoked.

6. The learned counsel for the petitioner submits that the petitioner has already entered appearance before the learned Magistrate and has been enlarged on bail. Unnecessary insistence on personal appearance of the accused is likely to cause great prejudice and hardship to the petitioner, submits the learned counsel for the petitioner. I find absolutely no reason to assume that the learned Magistrate would insist on unnecessary

personal appearance of the petitioner. The petitioner can claim to be represented by his counsel. Until the court takes a decision at the stage of Sec.239/240 of the Cr.P.C. that charges are liable to be framed against the petitioner, no personal appearance of the petitioner can or need be insisted by the learned Magistrate.

7. In the result, this Crl.M.C. is dismissed. I may hasten to observe that the dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioner to claim discharge or acquittal at later stages of the proceedings.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge